IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8215 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KASAVILA CO OP HOUSING SOCIETY LTD.

Versus

MAMLATDAR

Appearance:

1. Special Civil Application No. 8215 of 2004
MR AM PAREKH for Petitioner.
MR KL PANDYA AGP for Respondents No. 1-2
DS AFF.NOT FILED (R) for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 28/07/2004

ORAL JUDGEMENT

1. Learned advocate for the petitioner seeks permission to delete respondent No.4. Permission as prayed for, is granted.

2. The present petition has preferred by the petitioner under Article 227 of the Constitution of India

by quashing and setting aside the order dated 09.10.1999 passed below Ex.5 by the Civil Judge (J.D.), Ahmedabad (Rural) or alternative for getting direction upon the trial Court to decide an application preferred by the present petitioner for vacating the stay and joining as party respondent No.7, as early as possible, within a period of one month.

3. Learned advocate for the petitioner submits that the dispute raised in Regular Civil Suit No.544 of 2001 (Old No.324 of 1998) affects the present petitioner and, therefore, the present petitioner has filed an application below Ex.105 dated 28.12.2003 in Regular Civil Suit No.544 of 2001 (Old No.324 of 1998) for joining the petitioner, as respondent No.7 in the said suit and for vacating the stay granted by the trial Court below Ex.5 on 09.10.1999. As per the submission of learned advocate for the petitioner that the said application is yet not to be decided by the trial Court.

4. Mr.K.L.Pandya, learned A.G.P. for the respondent Nos.1 to 3 submits that the order passed by the Court below application Ex.5 is true and correct. So far as joining of the petitioner as party respondent No.7 is concerned, the decision has taken by the trial Court below Ex.5 does not affect the petitioner and even if, the same affects, the present petitioner, he can prefer an appeal. Therefore, the petitioner is not remediless, if a wrong has been committed to him, by any order of the Court below.

5. In view of the facts and circumstances of the case and the order passed by the Court below, I direct the learned Civil Judge (J.D.), Ahmedabad (Rural) to hear and decide Ex.105 preferred by the present petitioner in Regular Civil Suit No.544 of 2000 (Old No.324 of 1998) for joining party respondent No.7, as early as possible and practicably, preferably within a period of two months from the date of receipt of the writ of this Court.

6. With the aforesaid observations and directions, this application is, accordingly, disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[D. N. Patel,J.]
(vijay)